IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1224 OF 2002

The State of Maharashtra ... Petitioner

versus

Ajay Kumar Jain and anr. ... Respondents

...

Mr. K.V. Saste, A.P.P., for the Petitioner.

Mr. Ashok Dhamija, for Respondent No. 1.

...

CORAM : A.M.KHANWILKAR,J.

15th December 2004

P.C.:

. Appearance of Mr. Bhosale, Advocate, is wrongly mentioned for Respondent No. 1. The same be deleted from the records, as Mr. Dhamija appears for the same Respondent No. 1. By consent, the matter is taken up for final disposal forthwith. Heard Counsel for the parties.

. The Respondents are facing trial which is pending before the Special Judge for Greater

Mumbai, Mumbai, for offences, inter alia, under the Prevention of Corruption Act. Respondent No. 1 was the Government servant. Respondent No. 1 questioned the validity of the sanction order issued for institution of criminal action against him, along with other accused for offence under the Prevention of Corruption Act. The Court below found favour with the objection taken on behalf of Respondent No. 1 in relation to sanction order in question and accordingly, by judgment and order dated 7th June 2002, directed the investigating officer to refer the matter back to the sanctioning authority for obtaining valid sanction, after application of mind in terms of the observations made in the impugned order. The State of Maharashtra has questioned the correctness of the impugned decision of the Special Judge. According to the Petitioner, the issues that have weighed with the Special Judge for taking the view that the sanction order was bad cannot be sustained, for the simple reason that all those issues are required to be decided only at the end of the trial after evidence is let in by the parties on relevant matters. This is the main grievance of the Petitioner before this Court.

. The petition is contested mainly by the Respondent No. 1 as sanction order in question has been issued insofar as Respondent No. 1 is concerned. Counsel for Respondent No. 1 fairly accepts on instructions that the basis on which the Special Judge has proceeded to hold that the sanction order already granted is bad in law could be tested only at the end of the trial. He submits that the appropriate course in the fact situation of the present case is to set aside the impugned order and keep all the issues open relating to the validity of the sanction order as issued, to be tested at the appropriate stage of the proceedings. In other words, Respondent No. 1 virtually concedes the stand taken on behalf of the Petitioner before this Court and invites the order as mentioned earlier.

. Accordingly, the impugned judgment and order is set aside and the trial Court is directed to proceed with the trial in accordance with law. All questions relating to the validity of the sanction order in question are left open. The trial Court shall pronounce upon the same on the basis of the evidence on record let in by the

parties on the matters relevant to decide the validity of the sanction order. The trial Court shall decide those issues uninfluenced by any of the observations made in the impugned order; or, for that matter, in the present order. Petition succeeds on the above terms.

(A.M.KHANWILKAR,J.)